



**National Rural Electric  
Cooperative Association**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

July 22, 1997

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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W. Room 222  
Washington, D.C. 20554

Dear Mr. Caton:

The National Rural Electric Cooperative Association (NRECA) hereby submits its comments in response to the FCC's Notice of Inquiry, FCC 97-194 in the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming (CS Docket No. 97-141). An original and nine copies are enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Wallace F. Tillman". The signature is fluid and cursive, with a prominent flourish at the end.

Wallace F. Tillman  
Chief Counsel and Department Director

WFT/dac

Enclosures

No. 0000000000  
Date 7/23/97

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Annual Assessment of the Status of ) CS Docket No. 97-141  
Competition in Markets for the )  
Delivery of Video Programming )

To: The Commission

COMMENTS OF THE  
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Pursuant to Section 1.415 and 1.419 of the Federal Communication Commission's (FCC) Rules, the National Rural Electric Cooperative Association (NRECA) hereby submits its comments on the Notice of Inquiry, FCC 97-194, adopted June 3, 1997 and released June 10, 1997, in the above-captioned proceeding in which the FCC seeks to gather information, data and public comment necessary to prepare the fourth annual report (1997 Competition Report) on competition in markets for the delivery of video programming.

The National Rural Electric Cooperative Association (NRECA) is the national association of more than 1,000 consumer-owned rural electric generation & transmission and distribution systems which supply central station electricity to more than 25 million people in the rural and remote areas of 2600 counties in 46 states. Rural electric cooperatives serve some 75% of the land area and operate half of all of the miles of electric lines in the United States, often providing services to the farthest reaches of our nation. Rural electric systems average 5 consumers per mile of line, and serve large geographical areas where there are fewer than one consumer per mile.

**Comments**

In the above captioned Notice of Inquiry (Notice) at III.20 the FCC stated that there are ten specific changes from the Telecommunications Act of 1996 (Public Law 104-104) relating to competition in video markets on which comment would be useful. NRECA hereby provides comments on the eighth listed change, "Pole Attachment Regulation":

Pole Attachment Regulation. Section 703 of the 1996 Act expands the application of the pole attachment rate formula to include telecommunications carriers in addition to cable systems. Section 224(a)(4) of the Communications Act now defines "pole attachment" as "any attachment by a cable system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." However, poles, ducts, conduits, or rights-of-way owned

or controlled by any railroad, cooperative, or any federal or any state entity are not considered utilities for this purpose and are exempt from this regulation. We seek comment on the effect on competition that this exemption has on entities offering telecommunications services, including video services. In particular, we seek information to demonstrate whether the rates charged for pole attachments by cooperatives and municipalities, especially in rural areas, impede or promote competition.

NRECA first notes that the Notice of Inquiry appears to have glossed over a major legislative change stemming from the Telecommunications Act of 1996: all pole attachment rates are now subject to negotiation prior to regulation by a state or federal regulatory body (see S. Rept. 104-230, Conference Report to Accompany S. 652, Section 703(7)). The Telecommunications Act of 1996 specifically states that, "The Commission shall, no later than 2 years after the date of enactment of the Telecommunications Act of 1996, prescribe regulations in accordance with this subsection to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services, **when the parties fail to resolve a dispute over such charges.**" *[Emphasis added]* It seems clear to NRECA that Congress intended that negotiations are the preferred method for setting pole attachment rates.

NRECA recently conducted a survey of 525 of its distribution cooperative members to determine their pole attachment policies. Collectively they own about 2.8 million poles. Over 93% of these cooperatives own poles that are jointly used by other entities such as telephone companies and cable TV companies. The average rate they charge is \$6.71 per pole, and some cooperatives do not charge an attachment fee. In contrast over 76 % of the distribution cooperatives attach to poles owned by other entities. They are charged an average of \$9.02 per pole.

A large majority (84%) of the distribution cooperatives set their pole attachment rates through negotiation. There is considerable downward pressure on the rates they charge because the consumers they serve, their members and neighbors, are also provided telephone and cable television services by the attaching entities. For the consumer it's a "zero-sum game" economically because an increased charge by the pole owner is passed on to the consumer through the rates of the attaching entity. Accordingly, 75% of the distribution cooperatives reported that their pole attachment rates do not recover the attaching entity's proportionate share of the full cost of the pole.

Further, the Small Cable Business Association and the National Cable Television Association have accused electric cooperatives and telephone cooperatives of "erecting competitive barriers" involving pole attachment rates and conditions. They accuse "many cooperatives [of] having become DBS retailers" (FCC 97-164, Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Released May 8, 1997). The facts are not supportive of such claims. Less than 10 percent of NRECA's member rural electric cooperatives participate in DBS service, whereas there are about 1,000 rural electric cooperatives in the entire United States. Based on the foregoing rate statistics, the small number of cooperatives involved in DBS, and Congress' intent that negotiations are the preferred method of rate determination, NRECA challenges the assertions that cooperatives thwarting cable companies' business plans through punitive pole attachment rates and conditions.

Rural electric cooperatives retain rights and obligations under local, state and federal laws to provide safe, reliable electric service. Such service requires that rural electric cooperatives maintain poles and rights of-way in operable condition and have the final word over what other attachments may be placed on their facilities since they are responsible for ensuring that any attachment to one of their poles is done in a safe, pre-approved manner consistent with sound engineering standards. This has not always been the case when cable companies choose to attach to electric poles.

NRECA's membership is very much opposed to regulation of pole attachments, at any level of government and particularly a "one size fits all" regulation. Only 11% of the distribution cooperatives surveyed are regulated by state government. NRECA's members recently approved the following resolution which underscores their strong opposition to regulation of pole attachments:

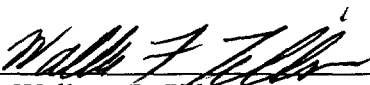
**REGULATION OF POLE ATTACHMENTS** — Regardless of any legislation which has been or may be passed vesting regulatory authority over pole attachments with the Federal Communications Commission, it is our position that such legislation, whether it includes rural electric cooperatives or not, is bad legislation, and pole attachment matters should be a matter of contractual arrangements between interested parties.

We must take all necessary measures to oppose any mandated pole attachment regulations.

NRECA very much appreciates this opportunity to provide comments on pole attachment rates charged by distribution cooperatives and the strong feelings of the NRECA members regarding pole attachment regulation.

Respectfully submitted,

NATIONAL RURAL ELECTRIC  
COOPERATIVE ASSOCIATION

By:   
Wallace F. Tillman  
Chief Counsel

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